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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,050	04/14/2004	Michael MacDowell	047960/271260	6122
826 7590 04/06/2007 ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER PATEL, RITA RAMESH	
			ART UNIT 1746	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/06/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/824,050

Applicant(s)

MACDOWELL, MICHAEL

Examiner

Rita R. Patel

Art Unit

1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 17-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-16, drawn to an automatic car wash system, classified in class 134, subclass 132.
- II. Claims 17-27, drawn to a method of processing a vehicles through a car wash, classified in class 134, subclass 25.1.
- III. Claims 28-32, drawn to a method of processing vehicles through a car wash, classified in class 134, subclass 25.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process of group II does not require the use of a control device as required by group I.

Inventions I and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP §

Art Unit: 1746

806.05(e)). In this case the process of group III does not require the use of a control device as required by group I.

Inventions II and III are directed to related processes. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed of group III require detecting the relative distance between at least two vehicles of a plurality of vehicles, as well as, sending information to at least one vehicle's driver relating to the relative distance between the at least one vehicle and an adjacent vehicle in order to effect a desired spacing between the at least one vehicle and the adjacent vehicle, however, the invention as claimed of group II fails to require such limitations and thus presenting two inventions having materially different operating, which do not overlap in scope, and fail to be obvious variants. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

During a telephone conversation with Nicholas Gallo on 3/28/07 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-16. Affirmation of this election must be made by applicant in replying to this Office action. Claims 17-32 are withdrawn from further consideration by the Examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

The drawings received 4/14/04 are acceptable for examination purposes.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al. (US Patent No. 6,551,415) further in view of Higgs (US 2003/0086574 A1).

Jones teaches a vehicle loading system for the wash bay (spray assembly) of an automatic vehicle wash system that includes a pair of side position sensors (at least two detectors) that detect and create a side profile of the vehicle as the vehicle enters into the wash bay. The vehicle wash system includes a front sensor array (at least one proximity device) that includes a plurality of through-beam sensors that detect the front bumper of a vehicle and signal the vehicle operator to stop when the front bumper is in the correct position. An overhead sensor contained on the overhead gantry detects the top profile of the vehicle positioned within the open wash bay. A control unit (control device) receives the information from the variety of sensors and operates the overhead gantry based upon the detected parameters of the vehicle. Jones further discloses a first, second, and third through beam 54, 56, 58 (plurality of stations) whereby the

Art Unit: 1746

control unit operates sign 30 (visual instruction) to instruct the customer to stop accordingly during the wash cycle (col. 5, lines 54-67).

Jones does not state in words the exact size of said car washing apparatus, however, as seen in Figure 2, a pick-up truck is depicted to be within the machine. Pick-up trucks with a full bed average at least 12-15 feet and it is approximated from said illustration of Jones that there is at least 4 feet of space in front of and behind the truck, thus reading on applicant's claims for an elongate path of at least 20 feet. Moreover, it would have been obvious to one having ordinary skill in the art at the time the invention was made to optimize the length of the car wash since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). The length of a car wash is optimally chosen to fit a desired number of cars during washing functions. In a preferred embodiment of the Jones invention, the right vehicle position sensor 32 and the left vehicle position sensor 34 are each an ultrasonic proximity sensor (ultrasonic detector) that can determine the distance between the individual sensor and the side of the vehicles (col. 4, lines 36-40).

Jones teaches the claimed invention, except fails to indicate the use of a radio signal in signaling the vehicle to move forward through the car wash; Jones merely teaches a sign 30 for providing visual instruction to the driver. Higgs, however, teaches a drive-in movie theater with a short range radio broadcast system that can send radio signals to cars on the parking garage, wherein movie-goers can listen to the movie sound tracks on their own car stereos/radios (audible instruction). When needed, the

Art Unit: 1746

invention of Higgs uses more than one transmitter, each operating at a different frequency, so that the effective service range of each transmitter can be made (Abstract). Providing information/signals to automobiles via radio transmission is known in the art of automobiles. Often in drive-in/drive-through restaurants radio signals are transmitted to the driver over an intercom and the driver is instructed to move said vehicle to the next window for appropriate payment/pick-up. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate said car radio information feature of Higgs in the car washing apparatus of Jones so drivers know when to move their car appropriately to the next position. Connecting said radio signals system to the control device of Jones would aid drivers to move their cars forward through the wash cycle automatically. It has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192. Jones in further view of Higgs are capable of reading over applicant's claims for a radio transmitter operable to transmit information selected from the group consisting of instructions, warnings, advertisements, offers, incentives, entertainment, news, music, and combinations thereof; in addition to, control a predetermined throughput of vehicles traveling through the system by directing audible and visual drive instructions at the vehicles. It is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPA 459 (CPA 1963). The apparatus of Jones

further in view of Higgs is fully capable of performing the claimed use of applicant's invention and thus reads over applicant's recitation of its claimed use.

Similarly, Jones anticipates the use of a controller unit in said apparatus, said controller unit is fully capable of operating to direct concurrent stop instructions to at least two vehicles along the wash path, thus reading on applicant's claims. It is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPA 459 (CPA 1963).

Although Jones indicates a first, second, and third beam (plurality of stations), it would have been obvious to one of ordinary skill in the art at the time of the invention to duplicate said stations to provide an increased number of washing stations; increased washing stations provide more cleaning for the vehicles until optimal cleanliness is reached. A plurality of stations for cleaning are known in the art of car washing apparatuses, such as water spraying, rinsing, drying, and waxing. It is well settled that the mere duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 124 USPQ 378 (CCPA 1960).

In re claim 14, applicant claims a multiple-channel entrance designed to direct vehicles from at least two feed channels into a common entrance channel. The invention of Jones in view of Higgs is fully capable of having a car make a right-turn or a left-turn when going into the entrance of the car wash; these two turn paths read on applicant's claims for at least two feed channels into a common entrance channel. If the

Art Unit: 1746

prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPA 459 (CPA 1963). The invention of Jones in view of Higgs is fully capable of feeding vehicles from two channels into the entrance. Moreover, it would have been obvious to one of ordinary skill in the art at the time of the invention to have multiple feed channels into the entrance of such a car wash to align cars accordingly into such a machine, rather than forming a singular, long line, instead a condensed amount of space may be utilized in lining up multiple feed channels of vehicles.

Claims 2 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones and Higgs with respect to claims 1 and 10, and further in view Aaron (US Patent No. 3,809,919).

Jones and Higgs teach the claimed invention, except fail to stately describe the exact washing functions incurred on the automobile during its traversal through the car washing apparatus; Jones only indicates a wash bay (spray assembly). However, Aaron teaches a control system for automatic car washing apparatus and fully discloses the specific washing type functions performed. Aaron teaches washing equipment which includes a wash water and soap spray for wetting the automobile (wheel washing station) with a soap solution, and this solution is delivered through a valve. Next, the automobile encounters top, left, and right brushes in that order as it is advanced, all these brushes being of the rotary variety (rotating brush). Following the brushes, the automobile passes through a rinse which sprays rinse water (rinsing device) to remove

Art Unit: 1746

the soap solution and dislodged dirt from the automobile. At the same time liquid wax (wax applicator) may be applied to the automobile. Finally, the automobile passes through a drying tunnel (dryer) where hot air is blow on the vehicle (col. 2, lines 24-29, 43-52). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the car washing functions taught by Aaron, to the car washing apparatus of Jones further in view of Higgs, because these are known cleaning functions used to clean cars effectively.

Conclusion

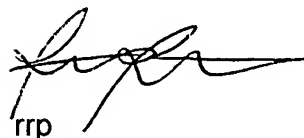
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ribnick et al. (US Patent No. 3,997,868) teaches a vehicle signaling arrangement provided with radio frequency signal generating means coupled to the radio frequency signal receiver means in other vehicles to indicate the presence of an emergency vehicle. Yasutake et al. (US Patent No. 5,432,974) teaches a car washing machine having a tunnel-shaped stationary car washing body installed to continuously was a vehicle transported therethrough on a conveyor system. Inoue (US Patent No. 5,447,574) teaches a portal frame for automatically washing vehicles therein, incorporating the use of photo-sensors stored in sequence to perform comparative washing operations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rita R. Patel whose telephone number is (571) 272-8701. The examiner can normally be reached on M-F: 8-5.

Art Unit: 1746

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


rrp
MICHAEL BARR
SUPERVISORY PATENT EXAMINER